

wherein said composition contains from about 0.05% to about 5.0% by weight of said compound, in an amount sufficient to enhance oxygen delivery to said tissue.

Claim 35: The method of claim 30, wherein said composition contains from about 0.1% to about 1% by weight of said compound.

Claim 36: The method of claim 30, wherein said composition is a cream, a lotion, a salve, a balm, a roll-on stick, a wash, or a suppository.

Claim 37: The method of claim 30, wherein said composition further comprises butyl benzoate.

REMARKS

Replacement claim 30 is a combination of prior claims 30 & 34. Hence, claim 34 is canceled. Claims 35-37 depended from claim 34, so their dependency requires changing. A showing of changes accompanies this amendment. Claims 30-33 and 35-37 are pending.

The incorporation of claim 34 into claim 30 obviates the anticipation rejection; however, for purposes of good order, applicants are entitled to a decision on their petition.

The examiner rejected claims 30 & 34-37 under 35 USC §103 in view of Huber plus Otsuka. Applicants traverse.

According to the examiner

"Applicants' rebuttal argument filed August 29, 2002 averring unexpected results have been considered, but are not found persuasive because of reasons discussed above."

The reasons, according to the examiner, are that

"The data in Table 2 merely demonstrate the duration of octyl ester is longer than that of hexyl ester. This is seen to be an expected effect because the partition coefficient of octyl ester is much higher than that of hexyl ester."

First of all, the examiner has not established that there is a connection between partition coefficients and duration of a pharmaceutical effect.

Further, the following is a direct quote from the primary reference:

"Of the esters of alcohols having 4-8 carbon atoms, I prefer to use n-hexyl nic tinate."